



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA-HQ-OPA-2011-0838; FRL-9494-8]

RIN 2050-AG69

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC)

Rule—Compliance Date Amendment for Farms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA (or the Agency) is taking final action to amend the date by which farms must prepare or amend, and implement their Spill Prevention, Control, and Countermeasure Plans to May 10, 2013. The date is being amended because a large segment of the continental U.S. was affected by flooding during the spring and summer of 2011, and other areas were impacted by devastating fires and drought conditions. In addition, despite the targeted farm outreach efforts by EPA over the past ten months, the sheer number of farms throughout the U.S. makes it a challenge to reach those owners and operators of farms that may be subject to the SPCC Plan regulations. As a result, the Agency believes that farms need additional time to come into compliance with the requirements to prepare or amend and implement a SPCC Plan.

DATES: This rule is effective on **[Insert date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No.

EPA-HQ-OPA-2011-0838. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either

electronically through www.regulations.gov or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the RCRA Docket is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424-9346 or TDD (800) 553-7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412-9810 or TDD (703) 412-3323. For more detailed information on specific aspects of this final rule, contact either Lynn Beasley at (202) 564-1965 (beasley.lynn@epa.gov) or Mark W. Howard at (202) 564-1964 (howard.markw@epa.gov), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460-0002, Mail Code 5104A .

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

Industry Sector	NAICS code
Farms	111, 112
Government	92

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION**

CONTACT section.

II. What Does This Amendment Do?

This action amends the date by which farms as defined in section 112.2 must prepare or amend, and implement their SPCC Plan to May 10, 2013. A farm is defined in this section as a facility on a tract of land devoted to the production of crops or raising of animals, including fish, which produced and sold, or normally would have produced and sold, \$1,000 or more of agricultural products during a year.

On June 19, 2009 (74 FR 29136), EPA issued a final rule in the Federal Register that amended the dates by which facilities must prepare or amend their SPCC Plans, and implement those Plans to November 10, 2010. On October 14, 2010 (75 FR 63093), EPA issued a final rule in the Federal Register with a new compliance date of November 10, 2011, by which certain facilities must prepare or amend, and implement their SPCC Plans, providing an additional year for the remaining facilities. On October 18, 2011, EPA issued a direct final rule (76 FR 64245) and a concurrent proposed rule (76 FR 64296), in the Federal Register that amended the dates by which farms must prepare or amend their SPCC Plans, and implement those Plans to May 10, 2013.

Prior to the close of the public comment period for the concurrent proposed rule, the Agency received written adverse comments concerning the amended compliance dates. This final rule supersedes any and all prior published rules, including the direct final rule, in extending the compliance date to May 10, 2013 for the owners or operators of farms as defined in 40 CFR §112.2. We have addressed the public comments in the Response to Comment section of this preamble. This action further extends the compliance date to May 10, 2013 for the owners or operators of farms as defined in 40 CFR §112.2. The Agency recognizes that the owners or operators of some facilities excluded from the extension of the compliance date may still require additional time to

amend or prepare their SPCC Plans as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of the owner or operator. If so, the owner or operator of the facility may submit a written request for additional time to amend or prepare a SPCC Plan to the Regional Administrator in accordance with §112.3(f). Under 40 CFR §112.3(f) the Regional Administrator may authorize an extension of time for the preparation and full implementation of a SPCC Plan, or any amendment thereto, beyond the time permitted for the preparation, implementation, or amendment of a SPCC Plan under this part, when he finds that the owner or operator of a facility subject to this section, cannot fully comply with the requirements as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or his agents or employees. If you are an owner or operator seeking an extension of time, you may submit a written extension request to the Regional Administrator. Your request must include a:

- (i) Full explanation of the cause for any such delay and the specific aspects of the Plan affected by the delay;
- (ii) Full discussion of actions being taken or contemplated to minimize or mitigate such delay; and
- (iii) Proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment, or other preventive measures. In addition you may present additional oral or written statements in support of your extension request.

The submission of a written extension request does not relieve you of your obligation to comply with the requirements of 40 CFR §112. The Regional Administrator may request a copy of your Plan to evaluate the extension request. When the Regional Administrator authorizes an extension of time for particular equipment or other specific aspects of the SPCC Plan, such extension does not affect your obligation to comply with the requirements related to other equipment or other specific aspects of the SPCC Plan for which the Regional Administrator has not expressly authorized an extension.

This action is not the vehicle for other extensions. EPA is not extending the compliance date for any other facilities as other facilities are not season-dependent and are less likely to be impacted by severe weather conditions. Additionally, other facilities retain the alternative mechanism for requesting an extension to the compliance date through 40 CFR §112.3(f).

III. What Was the Basis for Extending the SPCC Compliance Date for Farms?

A large segment of the continental U.S. was affected by flooding during the spring and summer of 2011. Other areas were impacted by devastating fires and drought conditions. In fact, many counties in several states were declared disaster areas by either the federal or their state government or both. EPA has received a number of letters and other correspondence, from State Agricultural Departments and other parties, explaining the impact of these recent floods on the owners and operators of farms and their ability to comply with the SPCC rule. These owners and operators have experienced interruptions in planting, cultivation and harvesting due to these floods. According to the Federal Emergency Management Agency (FEMA) in 2011, the Agency issued 56 Major Disaster/Emergency Declarations specifically associated with flooding events. According to FEMA's 2011 data, approximately two thirds of the fifty states had a FEMA flooding Major Disaster/Emergency Declarations. Almost a quarter of the fifty states had multiple

FEMA declarations due to flooding. These declarations are widespread throughout the crop production areas of the country. The Agency was also advised in the correspondence that there may be a lack of available qualified Professional Engineers (PEs) in some areas of the country to assist in the preparation, implementation, and review of SPCC Plans for farms.

In addition, despite the targeted farm outreach efforts by EPA over the past ten months, the sheer number of farms throughout the U.S. makes it a challenge to reach those owners and operators of farms that may be subject to the SPCC Plan regulations. As a result, the Agency believes that farms, as defined in section 112.2, need additional time to come into compliance with the requirements to prepare or amend and implement a SPCC Plan. While the Agency could require farms to request an extension pursuant to 40 CFR §112.3(f), as described above, the Agency believes that unless the Agency extends the compliance date for farms, we will receive an overwhelming number of requests for individual extensions. The Agency believes that this would be an inefficient use of scarce Agency resources to address this problem by processing a great number of individual extension requests.

Thus, the Agency has decided to extend the compliance date by which owners or operators of a farm must prepare or amend and implement a SPCC Plans to May 10, 2013. The additional 18 months allows enough time for farms to come in compliance with this regulation. The owners and operators of farms are strongly encouraged not to delay, and to take advantage of the off-season for planting and growing, in preparing their SPCC Plans. However, any farm owner or operator who is not able to come into compliance by May 10, 2013, and wishes to seek a further extension of the compliance date, should submit a written request to the Regional Administrator of the EPA Regional Office for the state where the farm is located in accordance with paragraph (f) of 40 CFR §112.3.

Finally, we would note that the amendment to the compliance date does not remove the regulatory requirement for owners or operators of farms in operation before August 16, 2002, to have and to maintain and continue implementing a SPCC Plan in accordance with the SPCC regulations then in effect. Such owners and operators continue to be required to maintain their SPCC Plans during the interim until the applicable compliance date for amending and implementing the amended SPCC Plans. In addition, the amendment of the compliance date does not relieve owners or operators of farms from the potential liability under the Clean Water Act or other environmental statutes or regulations for any spills (see 40 CFR part 110) that may occur.

IV. Response to Comments

The Agency received four comments. All of the comments were adverse in nature. A response to comment document can be found in the Agency's docket for this rule (EPA-HQ-OPA-2011-0838).

Comments: Comments received on the direct final rule with a concurrent proposed rule either disagreed with providing any extension or in one case the length of time (18 months) for the extension, suggesting instead a shorter extension. The commenters that expressly requested that the 18 month extension for farms not be granted cited one or more of the following concerns: 1) that repeated extensions (eight times) of compliance dates removes the urgency for farms to “do the right thing” from an environmental perspective or otherwise put off their SPCC obligations; 2) interferes with the (commenters’) ability to communicate to potential clients (farmers) the need to come into compliance soon; 3) there are many companies ready to assist farmers with their SPCC Plans; and 4) there are millions of dollars in grants available to farmers to help them come into compliance with the SPCC regulations. Two of the commenters suggested that greater outreach to farms regarding the SPCC Plan requirements is needed instead of the extension.

One commenter agreed that an extension is necessary but does not agree with the time frame of 18

months. The commenter stated that a vast majority of farming clients have indicated that they are out of harvest and feel confident that they can finalize their SPCC Plans during the winter months. Therefore, a three to four month extension coupled with a concerted effort to inform farmers of their regulatory responsibilities would be of far greater benefit to the farming community. The commenter cited three primary concerns of the proposed extension: 1) it jeopardizes the resources that are currently available to help producers gain compliance; 2) there are solutions and professionals available including a “free of charge” online SPCC Plan creation tool, even though most farms do not need a professional engineer (PE) to certify their SPCC Plan and are able to prepare a self-certified SPCC Plan; and 3) a concerted effort must be made to inform and educate farmers about the SPCC rule and their responsibilities. One commenter cited a potential loss of jobs associated with the action and the inequity of EPA’s enforcement of the SPCC regulation on farmers as compared to other sectors, such as the oil and gas sector.

Response: While we recognize that there have been multiple extensions to the compliance date under 40 CFR §112.3 – Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan, at this time, we are further extending the date for compliance for a narrow segment of industries that are covered by this regulation; i.e., farms.

The Agency considered comments that opposed any extension to the compliance date and the comment that recognized a compliance date extension was appropriate, but suggested a shorter compliance date, as well as letters from the Secretary of Agriculture, Arkansas Agriculture Department, the Commissioner of the Mississippi Department of Agriculture and Commerce and the Commissioner of the Louisiana Department of Agriculture previously received by the Agency, that specifically requested an additional 24 months for farms to implement SPCC Plans and recover financially from the impacts of extreme weather, find qualified engineers, and install the

proper equipment. The Agency proposed an 18 month extension determining that 24 months may be too long a period and decided 18 months should be adequate time for the farms. We still believe 18 months is the correct timeframe upon hearing from commenters that there are firms available to assist the farmers to come into compliance.

The Agency recognizes that farms, more than other industries, are directly impacted by extreme weather conditions, such as the devastating flooding and drought that was experienced this past year by a substantial portion of the continental U.S. Rather than requiring all impacted farms to submit a written request to the Regional Administrator of the EPA Regional Office for the state where the farm is located in accordance with paragraph (f) of 40 CFR §112.3, we determined that it is more efficient to extend the compliance date for the farm industry. We also want to emphasize that farms should not wait until May 10, 2013, to ready their SPCC Plans. Farms should take advantage of non-growing and non-harvesting seasons to focus on preparing and implementing their SPCC Plans.

Comments: Additionally, three of the four comments correctly explain that EPA's action does not provide an extension for those farms that were in operation on or before August 16, 2002, and which did not have a previously developed SPCC Plan. Such farms may be in noncompliance with the rule. A commenter also questioned the necessity of the current action, pointing out that most farms are in noncompliance and would not benefit from the extension. A second commenter also pointed out the misconception that all farmers (producers) will be eligible for the extension. The commenter stated that many farmers do not have SPCC Plans, thus, making them ineligible for the extension.

Response: The Agency agrees with commenters that said that only existing farms maintaining an SPCC plan or new farms coming into operation after August 16, 2002, are eligible for the

extension provided by this action.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563:

Improving Regulation and Regulatory Review

This action is not a “significant regulatory action” under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore is not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This final action does not impose any new information collection burden. The amendments in this final rule simply extend the compliance date for farms. This final rule does not change any reporting requirements in the general provisions. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing subparts of 40 CFR §112 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050-0021. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9. Subparts that will be added through separate rulemakings will document the respective information collection requirements in their own ICR documents.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a

small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The final rule simply amends the date for compliance. The final rule does not itself add any additional subparts or requirements. The final rule will not impose any new requirements on small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The amendments in this final rule change the compliance date for farms.

E. Executive Order 13132: Federalism

Executive Order (EO) 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the EO to include regulations that have "substantial direct effects on the states, on the relationship between the national government and

the states, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have Federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. This amendment applies directly to farms. It does not apply to governmental entities unless the government entity owns a farm, as defined in 40 CFR §112.2 Definitions. This regulation also does not limit the power of states or localities to regulate farms. Thus, EO 13132 does not apply to this final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The changes in this final rule do not result in any changes to the requirements of the 2009 rule. Thus Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The changes in this final rule do not result in any changes to the requirements applicable to farms, other than the date for compliance.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR

28355 (May 22, 2001) because it is not likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority

Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that the final rule amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because

the amendments do not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective **[insert date of publication in the Federal Register]**.

List of Subjects in 40 CFR Part 112

Oil pollution prevention, Farms, Compliance date, Reporting and recordkeeping requirements

Dated: November 10, 2011.

Lisa P. Jackson,
Administrator

For the reasons set out above, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 112 – OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

AUTHORITY: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p.351.

2. Section 112.3 is amended by revising paragraph (a)(3) to read as follows:

§112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a) * * *

(3) If your farm, as defined in §112.2, was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the amended Plan on or before May 10, 2013. If your farm becomes operational after August 16, 2002, through May 10, 2013, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan on or before May 10, 2013. If your farm becomes operational after May 10, 2013, and could reasonably be expected to have a discharge as described in §112.1(b), you must prepare and implement a Plan before you begin operations.

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